

IN RE: PETITION FOR ZONING VARIANCE
N/S Eastport Court, 65' W and
opposite c/l of Marblehead Road
(12 Eastport Court)
8th Election District
3rd Councilmanic District
T.W.S. Inc.
Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 89-282-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a window to window distance of 30 feet in lieu of the required 40 feet, and to amend the Final Development Plan of The Fields At Seminary, Lot #16, accordingly, as more particularly described in Petitioner's Exhibit 1.

The Petitioner, by Douglas C. Corbin, Vice President of T.W.S., Inc., and the Contract Purchaser, NV Homes, by Ross Walton, Division Manager and Vice President, and Bill DeMarco, appeared, testified and were represented by Robert J. Ryan, Esquire. Also appearing on behalf of the Petition was Sam Shockley with Development Engineering Consultants, Inc. There were no Protestants.

Testimony indicated that the subject property, known as 12 Eastport Court (Lot 16), zoned D.R. 2, is part of a 31-lot development known as The Fields of Seminary II. NV Homes has the contract to purchase all of the lots from T.W.S., Inc. Mr. Walton testified regarding NV Homes' experience in building homes in the Baltimore, Washington, Delaware, and McLean, Virginia areas, and in particular, their previous developments in Baltimore County. He further testified that after completing a marketing analysis of the area, it was determined that there was a need for larger, executive style homes in the area. As a result, NV Homes felt this particular development should have homes such as the Potomac, the Kingsmill and

the Harrison of their line. Copies of the floor plans for each style were presented and identified as Petitioner's Exhibits 2A through 2C. The size of each home will range from 2,500 sq.ft. to 4,000 sq.ft. on an average lot size of 1/4 acre. Mr. Walton testified that after numerous attempts to appropriately position these houses on each of the lots, it was determined that variances would be required for 9 of the 31 lots.

Testimony presented by Petitioner's witnesses indicated NV Homes firmly believes either no variances would be needed or a much smaller size variance would be required if no windows were placed in the sides of the houses. However, such a decision would not take into consideration the desires of potential homeowners. Testimony presented indicated that windows on the sides were preferable for various reasons, including cross-ventilation, additional lighting and aesthetic appeal. Petitioner further noted that many of the windows will be installed in such a way that adjoining properties will not have dwellings with windows located directly across from one another.

Counsel for Petitioner argued that the spirit and intent of the zoning regulations had been met by the proposed plans and that flexibility was needed due to the change in marketing demands and housing costs. Counsel further argued the property is subject to the regulations which went into effect in 1970 and that said regulations do not adequately reflect today's market and the increase in the cost of the property.

Petitioners argued that to deny the requested variances would create tremendous practical difficulty upon the Petitioners without benefiting the community. Counsel indicated potential property owners and persons who might be adversely affected by the granting of the variances would be protected due to the fact that all parties will be advised of the

variances prior to their purchase of any of the subject lots and therefore have the ability to determine whether or not such variance will adversely affect the enjoyment of their property. Petitioner contended the lots could not be resubdivided to reduce the number of lots by one or two to give additional acreage for each lot to meet setback requirements without a "two year" delay in development.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In the opinion of the Deputy Zoning Commissioner, the variances requested herein are appropriate in some instances and excessive in others and therefore not in keeping with the spirit and intent of the zoning regulations. It is clear that N.V. Homes attempted to fit its homes on lots previously laid out by Petitioners. The variances for Lots 14, 15, 16 and 17 will be granted with restrictions as in those cases, it is felt the requests are reasonable and within the spirit and intent of the B.C.Z.R. The desirability of having windows on the sides of a home for

the reasons earlier discussed are valid. Potential purchasers can choose for themselves as to whether the variance granted herein will adversely affect the enjoyment of their property. The variance requested for Lot 18, which is larger than that requested for Lots 14, 15, 16 and 17, creates more of a problem; however, to deny the request would result in either building a house on the lot that is not in keeping with the design and style of the adjoining Lots 1 through 26, or result in re-designing many of the lots in the subdivision which, as argued, would create a practical difficulty for the Petitioners. In light of the desire of a potential purchaser to have a compatible home with others in the neighborhood and the practical difficulty which could be created for Petitioners, the variances for Lot 18 will be granted with restrictions.

With respect to Lots 28, 29, 30 and 31, Petitioner could re-adjust lot lines to create three lots in lieu of the four proposed with adequate space to either meet the setback requirements or be more in keeping with the spirit and intent of the B.C.Z.R. The testimony presented by Petitioners in these instances was in support of a matter of convenience rather than of the necessity for the variances. In the opinion of the Deputy Zoning Commissioner, the variances requested were excessive. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variances requested for Lots 28 through 31 must be denied.

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-282-A #160

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1801.2-C.2-b, 504 (VB6-C, CMOP) to Permit a window in window distance of 30 ft. in lieu of the required 40 ft. for Lot #16 and to amend the Final Development Plan of the Fields At Seminary, Lot #16 to allow same.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Reduction in size of standard units impractical for builder.
2. Smaller units would be inconsistent with other units in subdivision.
3. Smaller units would be incompatible with the concept and intent of development in the immediate and surrounding neighborhoods.

LOT # 16 #12 EASTPORT COURT
Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	T.W.S., Inc.
Signature	(Type or Print Name)
Address	Signature DOUGLAS C. CORBIN, V.P.
City and State	(Type or Print Name)
Attorney for Petitioner:	Signature
(Type or Print Name)	Address
Signature	City and State
Address	Name, address and phone number of legal owner's representative to be contacted
City and State	STEVEN L. FADER
Attorney's Telephone No.:	DEVELOPMENT ENGINEERING CONSULTANTS, INC.
	6603 YORK ROAD
	BALTIMORE, MD. 21212 (301) 377-2600
	Address Phone No.

ORDERED BY The Zoning Commissioner of Baltimore County, this 24th day of March, 1989, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 25th day of March, 1989, at 9:30 o'clock A.M.

ESTIMATED LENGTH OF HEARING 10P
AVAILABLE FOR HEARING MON./TUE./WED. - NEXT TWO MONTHS (over)
ALL OTHER DATE 12-11-88
REVIEWED BY J. Robert Haines
Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested for Lot 16 should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of March, 1989 that the Petition for Zoning Variance to permit a window to window distance of 30 feet in lieu of the required 40 feet, in accordance with Petitioner's Exhibit 1, and to amend the Final Development Plan of The Fields At Seminary, Lot #16 accordingly, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall prepare a site plan of the 31-lot development known as The Fields at Seminary II of a minimum size as that submitted herein, identified as Petitioner's Exhibit 5, which shall reflect each variance granted for the development in a manner similar to that set forth in Petitioner's Exhibits 4A and 4B setting forth on the site plan the variances granted for each lot. Said plan shall be shown to and acknowledged as seen by each potential buyer of Lots 1 through 31 prior to the sale of any lot.
- 3) Petitioners shall cause the deeds for Lots 14 through 18 to specifically reference the zoning case applicable to each lot.
- 4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

5) Petitioner and Contract Purchaser shall not request any further variances for Lot 16.

AMN:bjs

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

March 3, 1989

Robert J. Ryan, Esquire
4111 E. Joppa Road
Baltimore, Maryland 21236

RE: PETITION FOR ZONING VARIANCE
N/S Eastport Court, 65' W and opposite the c/l of Marblehead Road
(12 Eastport Court - Lot 16)
8th Election District - 3rd Councilmanic District
T.W.S., Inc. - Petitioner
Case No. 39-282-A

Dear Mr. Ryan:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: Ms. Mary Ginn
606 Horncrest Road, Towson, Md. 21204

People's Counsel

File

#160

**DESCRIPTION TO ACCOMPANY
PETITION FOR VARIANCE REQUEST**

OUTLINE DESCRIPTION OF LOT NO. 16 OF THE FIELDS AT SEMINARY II, ALSO BEING KNOWN AS #12 EASTPORT COURT. LOCATED IN THE 8TH ELECTION DISTRICT OF BALTIMORE COUNTY, MARYLAND.

Beginning for the same at a point on the northern-most right-of-way line of Eastport Court; said point being distant 65 ± feet westerly from the centerline of Marbelhead Road right-of-way, thence running for the following 4 courses and distances viz:
(1) North 80 degrees 06 minutes 47 seconds West, 90.00 feet; (2) North 09 degrees 53 minutes 13 seconds East, 142.16 feet; (3) South 89 degrees 56 minutes 30 seconds East, 91.34 feet; (4) South 09 degrees 53 minutes 13 seconds West, 157.75 feet to the point of beginning.

Containing 0.310 acres of land more or less.

Being the same parcel as shown on a plat entitled "The Fields at Seminary II", to be recorded.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

T.W.S., Inc.
4111 E. Joppa Road
Baltimore, Maryland 21236

ATTN: DOUGLAS C. CORBIN

RE: Petition for Zoning Variance
CASE NUMBER: 89-282-A

Gentlemen:

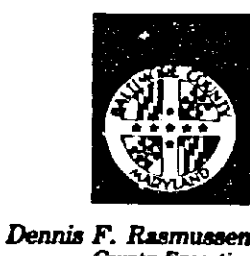
Please be advised that \$110.29 is due for advertising and posting of the above referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign & post set(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that the sign and post set(s), above fee for each such

BALTIMORE COUNTY, MARYLAND No. 065760
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
DATE 25 JAN 89 ACCOUNT R-01-615-000
AMOUNT \$ 110.29
RECEIVED FROM T.W.S. INC.
FOR POSTING & ADVERTISING (89-282-A)
8 B [2] *****1102518 5254F
VALIDATION OR SIGNATURE OF CASHIER
DATE-TIME: 10:00 AM JAN 25 1989



Dennis F. Rasmussen
County Executive

CERTIFICATE OF PUBLICATION

TOWSON, MD., January 5, 1989
THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Jan 5, 1989.

JHE JEFFERSONIAN
TOWSON TIMES.

PO 07851
reg M25147
case 89-282-A
prio \$95.29

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:
Petition for Zoning Variance
Case Number: 89-282-A
NS Eastport Court, 65' W and opp. of Marbelhead Road
12 Eastport Court (Lot 16)
8th Election District - 3rd Councilmanic
Petitioner(s): T.W.S., Inc.
Hearing Date: Wednesday, Jan. 25, 1989 at 9:30 a.m.
Variance: to permit a window to window distance of 30 feet in lieu of the required 40 feet for Lot #16 and to amend the Final Development Plan of The Fields at Seminary, Lot #16 to allow same.
In the event this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
01010 Jan. 5.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 8th
Posted for: Variance
Petitioner: T.W.S. INC.
Location of property: N.E. of Eastport Court opposite the C.C. of Marbelhead Road (Lot 16)
Location of Sign: South side of Chesapeake Avenue at the intersection of Marbelhead Road
Remarks: N.E. of Eastport Court
Posted by: J. R. Haines
Number of Signs: 1

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

NOTICE OF HEARING

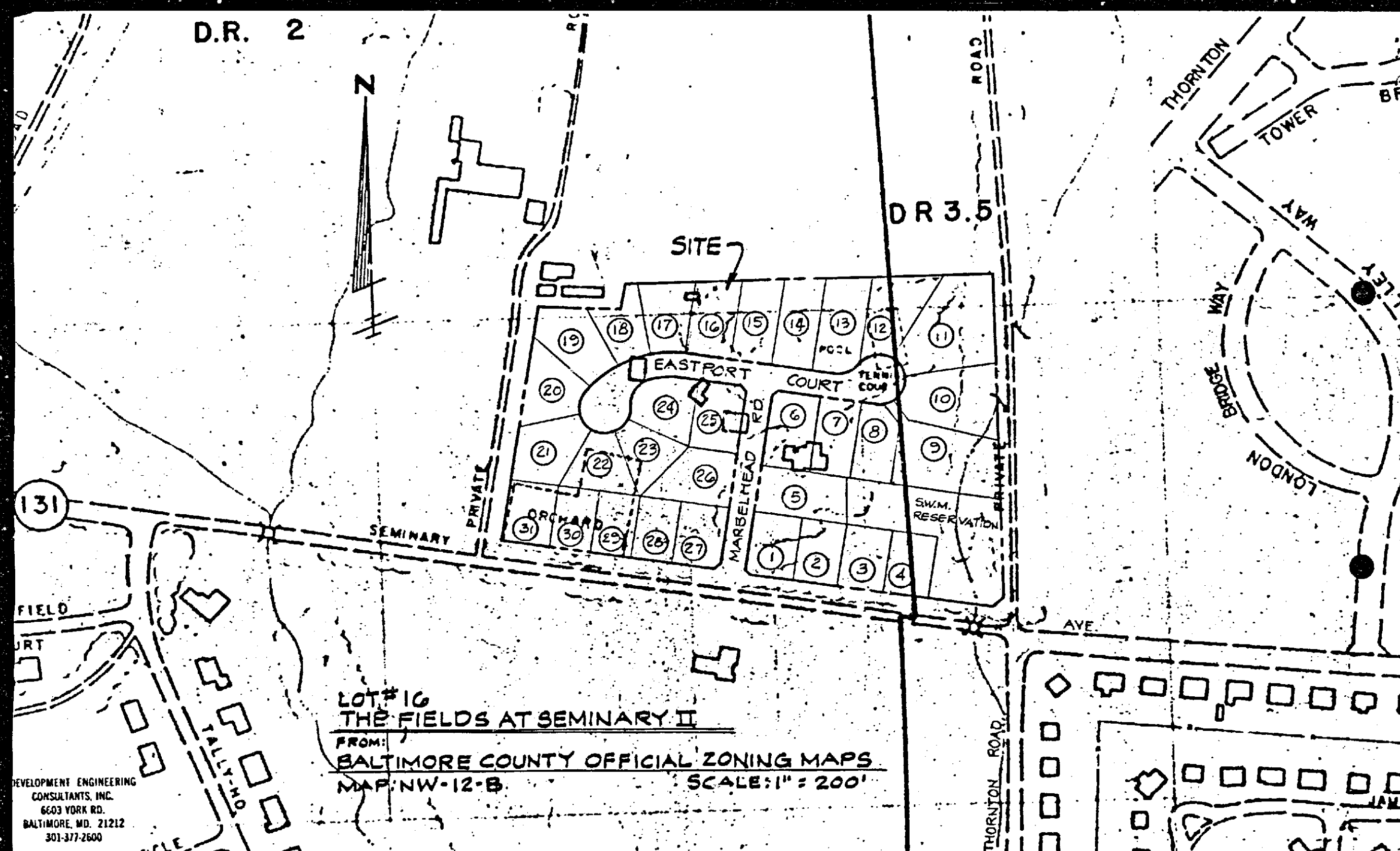
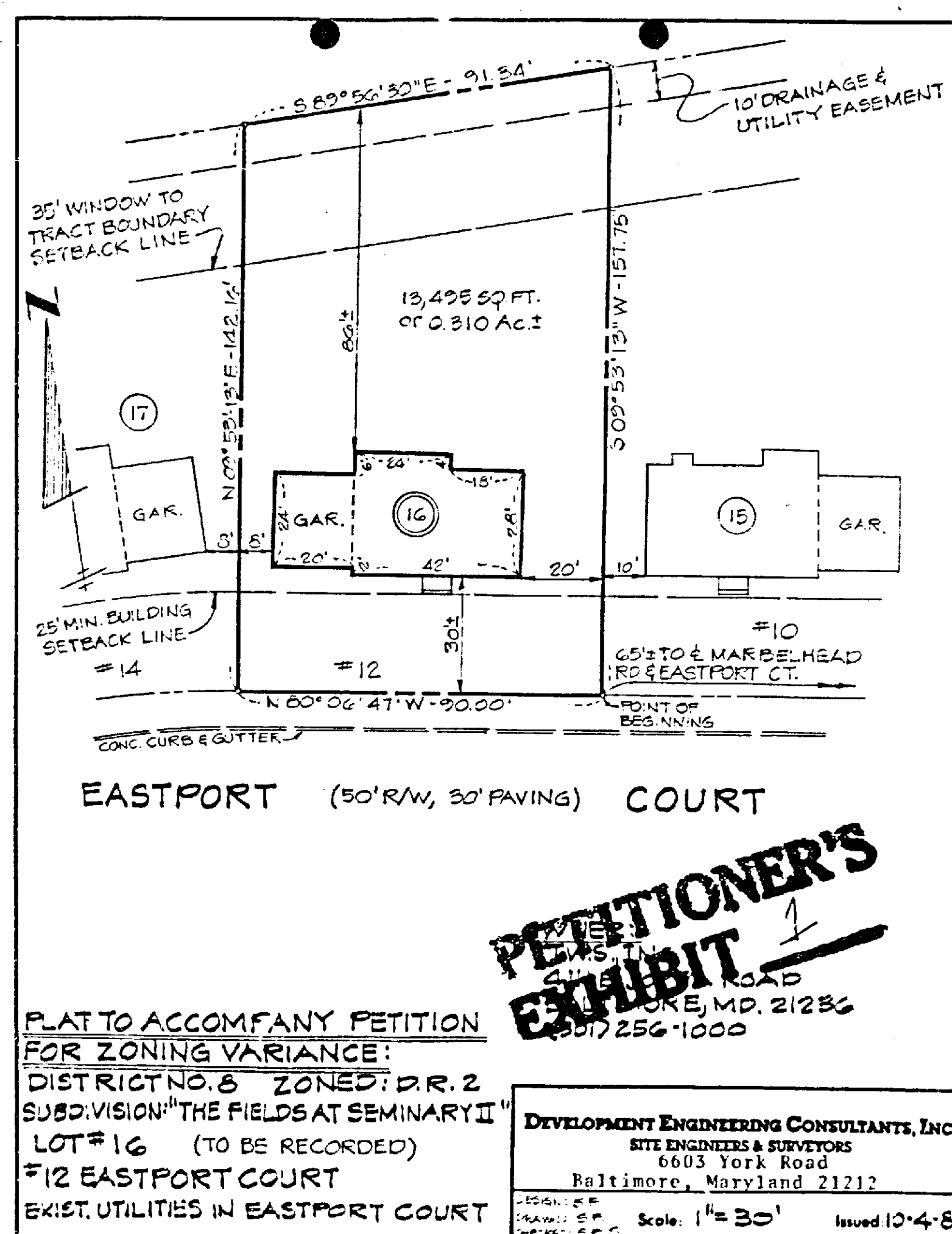
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PETITION FOR ZONING VARIANCE
Case Number: 89-282-A
NS Eastport Court, 65' W and opp. c/l Marbelhead Road
12 Eastport Court (Lot 16)
8th Election District - 3rd Councilmanic
Petitioner(s): T.W.S., Inc.
HEARING SCHEDULED: WEDNESDAY, JANUARY 25, 1989 at 9:30 a.m.

Variance to permit a window to window distance of 30 feet in lieu of the required 40 feet for Lot #16 and to amend the Final Development Plan of The Fields at Seminary, Lot #16 to allow same.

In the event this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County



89-282-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
2nd day of November, 1988.

Petitioner T.W.S., Inc.
Petitioner's Attorney

Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

December 2, 1988

J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson, Maryland 21204

Re: Property Owner: T. W. S., Inc.

Location: NS Eastport Ct., 65' W. of & Opp. c/1 of
Marbelhead Rd. (#12 Eastport Ct.)

Item No.: 160 Zoning Agenda: Meeting of 11/1/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: [Signature] NOTED & APPROVED:
Planning Group Fire Prevention Bureau
Special Inspection Division

/s/



Dennis F. Rasmussen
County Executive

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 17, 1989

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

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MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Douglas C. Corbin, Vice President
T.W.S., Inc.
4111 East Joppa Road
Baltimore, Maryland 21236

RE: Item No. 160, Case No. 89-282-A
Petitioner: T.W.S., Inc.
Petition for Zoning Variance

Dear Mr. Corbin:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer/de
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures

cc: Steven L. Fader
Development Engineering Consultants, Inc.
6603 York Road
Baltimore, MD 21212

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

J. Robert Haines
Zoning Commissioner
TO: _____ Date: January 20, 1989
Pat Keller, Deputy Director
FROM: Office of Planning and Zoning
Zoning Petition Nos. 89-230-A through 39-288-A
SUBJECT: TWS, Inc. (The Fields at Seminary II - Lots, 14,15,16,17,13,23,29,30)

The applicant is requesting a series of variances to allow a reduced building separation (distance between buildings) for 9 lots in a 31 lot subdivision. In reference to this request, staff provides the following information:

- The applicant states that 1) a reduction in size of standard units is impractical, and 2) smaller units would be inconsistent with other units in the subdivision; and 3) smaller units would be incompatible with the concept and intent of development in surrounding neighborhoods. The statement of hardship implies that adhering to zoning standards would result in the provision of smaller units. Based upon staff estimates, building widths would average 50 feet in length and range between 115 and 125 feet in depth and fall within the required building restriction lines. This buildable lot area would provide a building footprint of approximately 5,700 square feet or larger in size. Adhering to zoning requirements would not in fact result in smaller building sizes being constructed on the site. Certainly, different building footprints would be required on the site but not smaller building footprints.
- The issue of compatibility within the subdivisions and neighborhood raises questions of identical homes being provided within the subdivision, and similar lot sizes and building sizes located in the surrounding community. The desire to provide identical homes throughout the subdivision should have taken into consideration the lot configuration approved for the development. Obviously, the desire to maintain a standard building form on smaller lot widths is dictating the need for variances.

Staff's main concern in situations such as these is maintaining the integrity of the density residential concept and the basic design tenets of the CMDF Manual. Regardless of windows and building heights, the primary goal of building separation is to provide for light, air, noise reduction, open space and nuisance reduction. Based upon these general considerations, staff would recommend a minimum building separation be provided based upon the 45 percent rule that maintains a 45 degree angle from the edge of structure ridge line to base of adjoining structure. Using this basic principle, a 20 foot building separation between non-garage sides should be provided, and a 30 foot separation between non-garage sides should be provided.

PK/sf

RECEIVED
JAN 23 1989

ZONING OFFICE

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

November 25, 1988



Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

ZAC - Meeting of November 1, 1988
Item Nos. 158, 159, 160, 161, and 162.

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for item numbers 158, 159, 160, 161, and 162.

Michael S. Flanagan
Traffic Engineer Associate II

MSF/lvw

RECEIVED
NOV 25 1988
ZONING OFFICE